

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(see reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2014-0804-02	REGULATORY ACTION NUMBER 2015-0707-02SR	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

2015 JUL -7 PM 2:34
OFFICE OF
ADMINISTRATIVE LAW

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AUG 17 2015

2:09 PM

NOTICE	REGULATIONS
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AGENCY FILE NUMBER (if any)

AGENCY WITH RULEMAKING AUTHORITY

California Department of Food and Agriculture

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Milk Producers Security Trust Fund	TITLE(S) 3	FIRST SECTION AFFECTED 2100	2. REQUESTED PUBLICATION DATE August 15, 2014
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON John Lee	TELEPHONE NUMBER 916-900-5012	FAX NUMBER (Optional) 916-900-5240
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER 2014 332	PUBLICATION DATE 8/15/2014

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Milk Producers Security Trust Fund	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) Z-2014-0804-02 2015-0226-055
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND Section 2100
	REPEAL
TITLE(S) 3	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)	per agency request
<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> \$100 Changes Without Regulatory Effect
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM 5666)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON John Lee	TELEPHONE NUMBER 916-900-5012	FAX NUMBER (Optional) 916-900-5240	E-MAIL ADDRESS (Optional) jlee@cdfa.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Karen Ross for	DATE 6/30/15
TYPED NAME AND TITLE OF SIGNATORY Karen Ross, Secretary, California Department of Food and Agriculture	

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ENDORSED APPROVED

AUG 17 2015

Office of Administrative Law

3 CCR § 2100

§ 2100. Definition of Beneficial Ownership Interest.

~~(a)~~ For purposes of Milk Producer Security Trust Fund (hereinafter "Fund") coverage criteria for milk shipped by a producer to a handler, as set forth in Food and Agricultural Code Section 62580, the term "beneficial ownership interest" shall be defined as set forth in ~~(b)~~ (a) of this Section.

(a) Except as otherwise provided by law, any person or any other legally constituted business entity, or any form of cooperative ownership, shall be deemed to have a beneficial ownership *interest* in a handler by:

(1) Owning an interest in the stock, profits, losses, debt or equity of the handler, as evidenced by legal or regulatory documents, such as by-laws, financial instruments, securities, liens, accounting reports and statements, tax filings and forms, licenses and other comparable records; and

(2) Serving as an officer, director, partner, or manager of the handler or otherwise occupying a position with a handler that confers the authority to influence or create policy which affects the handler's business decisions.

(b) For the purpose of determining cooperative beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their member's milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) A cooperative shall possess a beneficial ownership interest in any handler or other cooperative in which it possesses an interest as set forth in subdivision (a).

(c) A beneficial ownership interest in a handler attributable to any person or legally constituted business entity as provided in subsection (a) shall also be attributable to anyone possessing a controlling interest in the entity.

~~(b) Except as otherwise provided by law, any person or any other legally constituted business entity, including but not limited to, a corporation, limited partnership, limited liability company, joint venture, association, or any other form of cooperative ownership, shall be deemed to have a beneficial ownership interest through owning an interest in a handler, as defined in Food and Agricultural Code Section 62521(d), in any form, such that they have any interest in the profits, losses, or equity of that handler, with the authority to influence or create policy which affects the handler's policies and business decisions.~~

(e) Authority to influence or create policy includes service in any discretionary capacity associated with a handler's policies and business decisions, and shall not be limited to service in an official capacity, such as a member of a Board of Directors, or employment as an officer or any administrative position.

(d) An individual possesses a beneficial ownership interest only if he/she owns a 10 percent or greater interest in the equity and/or profits and/or losses of a handler, with the exception that an individual who owns a 10 percent interest or greater interest as community property with his/her spouse shall be deemed to possess a beneficial ownership interest.

(e) A producer who has extended credit to a handler does not possess a beneficial ownership interest unless the terms of the agreement under which such credit was extended permit the producer to acquire a 10 percent or greater ownership interest in the handler in any form.

(f) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) A cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.

(2) A cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses, equity capital or stock.

(g) Producers and cooperative members specifically possess beneficial ownership interests, beyond the general provisions of (b) and (c) in this Section, in the following circumstances:

(1) A producer who is a member of a cooperative has a beneficial ownership interest in that cooperative.

(2) All members of a cooperative, including producers, additionally have beneficial ownership interest in any other cooperatives in which their cooperative has such an interest.

(3) All members of a cooperative, including producers, have a beneficial ownership interest in any handler in which their cooperative has a beneficial ownership interest.

(h) For the purpose of determining beneficial ownership interests, cooperatives shall be treated as producers for all transactions involving the handling of their members' milk in bulk form, and shall be treated as handlers for all transactions involving non-member bulk milk.

(1) In addition to the general provisions of (b) and (c) in this Section, a cooperative will be deemed to have a beneficial ownership interest in a handler if any member of that

cooperative owns a 10 percent or greater interest in the handler's gross revenues and/or profits and/or losses and/or equity capital or stock.

(2) In addition to the general provisions of (b) and (c) in this Section, a cooperative shall also be treated as having a beneficial ownership interest in any handler in which the cooperative has a 10 percent or greater interest in such handler's profits and/or losses and/or equity capital or stock.

(i) For purposes of determining whether a corporation possesses a beneficial ownership interest, there are "S" corporations as defined and regulated by the Internal Revenue Service, and "C" corporations, which are all corporations other than "S" corporations.

(1) In determining whether an "S" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns or controls any of the "S" corporation's stock shall be deemed to be owned by the "S" corporation.

(2) In determining whether a "C" corporation has a beneficial ownership interest in a handler, all beneficial ownership interests in a handler held by any person/entity who owns five percent or more of the "C" corporation's stock, regardless of class, shall be deemed to be owned by the "C" corporation.

(3) In addition to the general provisions of (b) and (c) in this Section, any beneficial ownership interest of a "C" corporation shall be attributed to any stockholder who owns a 5 percent or greater interest in any class of stock of the corporation.

(j) A "Controlled Group of Corporations" (hereinafter "CGC") is defined as any group of corporations, partnerships, joint ventures or any other business entities, where a common parent entity owns or controls the largest number of outstanding shares, or any other ownership interest, in each member of the group.

(1) In addition to the general provisions of (b) and (c) of this Section, if a CGC cumulatively owns, as the parent entity of any group of corporations, partnerships, joint ventures or other business entities, as defined in (j) of this Section, a 10 percent or greater interest in any handler derived from these entities, the CGC shall be deemed to have a beneficial ownership interest in that handler.

(2) In addition to the general provisions of (b) and (c) of this Section, if a producer or cooperative owns a 10 percent or greater interest in a handler, and that handler is also a member of a CGC, the producer or cooperative shall be deemed to have a beneficial ownership interest in all corporations, partnerships, joint ventures or other business entities of the CGC.

~~(3) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest of an "S" corporation shall be attributed to each stockholder of the corporation.~~

~~(4) Any beneficial ownership interest held by any common owner or subsidiary company of a CGC shall be considered as being held by each member of the group.~~

~~(k) A partnership, limited partnership, joint venture, estate or trust will be deemed to own any beneficial ownership interest attributed to any of its partners or beneficiaries.~~

~~(1) A beneficial ownership interest owned by a partnership shall be attributed to each partner of the partnership.~~

~~(2) Joint ventures and/or similar arrangements involving the participation of corporate participants shall be treated as partnerships.~~

~~(3) All participants in joint ventures and/or similar arrangements shall be treated as partners.~~

~~(4) In situations involving trusts and estates, where the beneficiaries have no rights to direct or influence the entity's decisions, these beneficiaries shall be treated like "C" corporation shareholders.~~

~~(l) In addition to the general provisions of (b) and (c) of this Section, any beneficial ownership interest owned by a Limited Liability Company (hereinafter "LLC") shall be attributed to each member of the company. Conversely, any beneficial ownership interest owned by a member of a LLC shall be attributed to the LLC.~~

Note: Authority cited: Section 407, Food and Agricultural Code. Reference: Sections 62580 and 62587, Food and Agricultural Code.